obtained (*Schibsby v. Westenholze*[16A]) but those facts and circumstances are not present in the case before me.

None of the submissions made to me contravene the principles that I have enumerated and it was for these reasons, which I have now set out at some length, that I gave judgment for the plaintiff with costs at the conclusion of the hearing.

Judgment Accordingly.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J., POYSER, C.J. (F.M.S.) & GORDON-SMITH, Ag. J.A.

July 1, 1940.

ALKAFF & CO.

v.

THE ASSISTANT CONTROLLER OF LABOUR.

[SINGAPORE SPECIAL APPEAL No. 2 of 1939]

Workmen's Compensation Ordinance (Cap. 70)—S. 24 sub-ss. 1, 3 and S. 26—Application by Controller on behalf of dependant of deceased workman—Necessity of legal proof of existence of dependant and of failure of attempt to settle by agreement.

Before any application in respect of workman's compensation can be made for settlement of the matter by a Commissioner the statutory condition precedent imposed by S. 24 (1) of the Workmen's Compensation Ordinance must be complied with. There must be a dependant in existence and an attempt must be made to settle by agreement. The Controller must be prepared with legal proof as to the existence of the dependant and also as to the failure of an attempt to settle by agreement.

Per Terrell, Ag. C.J. and Poyser, C.J. (F.M.S.)—The Controller has no right to go to the employer and claim compensation unless he is representing some actual person who is or may be entitled to such compensation and he has no **locus standi** unless he applies on the instructions of some such person. He must be authorised before he can act and is then in the same position as an advocate and solicitor.

Per Gordon-Smith, Ag. J.A. The Assistant Controller is authorised to represent or to act for and on behalf of the dependant of the deceased workman and it is immaterial how he may describe himself in the form of the application so long as it is made clear that he is acting in such representative capacity on behalf of an actual dependant and that the necessary particulars of the dependant are given.

Cases referred to:—

1. *Barron v. Carmichael,* (1912) 1 Workmen's Compensation Reports 312.
2. *Field v. Longden & Sons,* 18 T.L.R. 65.
3. *Pringh v. Harris,* (1925) 1 K.B. 573.
4. *Simpson v. Crowle,* (1921) 3 K.B. 243.

APPEAL from the judgment of the Commissioner for Workmen's Compensation (E. N. Taylor) allowed with costs in the High Court and below.

HEARING.

D. K. Walters for the appellants.

K. K. O'Connor for the respondents.

The facts and arguments sufficiently appear from the judgments.

Cur. Adv. Vult.

Terrell, Ag. C.J.—This was an appeal from an award by the Commissioner for Workmen's Compensation directed to be heard before three Judges of the Supreme Court.

The facts are sufficiently set out in the judgment of Gordon-Smith, Ag. J.A. which I have had the opportunity of reading, and it is not necessary to recapitulate them.

Mr. O'Connor, counsel for the Assistant Controller of Labour, respondent on the appeal, raised certain preliminary points. The first of these was that the Commissioner gave a judgment on the 14th February, 1939, rejecting various preliminary objections raised by the appellants on the original hearing, and that no appeal was entered against such judgment, the only judgment that is appealed against being the final judgment of the Commissioner dated the 14th June, 1939. For the purpose of deciding this point it is necessary to examine the judgment of the 14th February 1939 (hereinafter referred to as the interlocutory order). It appears that it was drawn up by the Commissioner himself and was not submitted to or approved by the parties. The interlocutory order is in three parts:—the first directs certain amendments which were due to the fact that the form of the application was open to objection, the second part directed that "the application be fixed for hearing on Friday the 17th February at 10 a.m.", and the third that the costs of the preliminary objections be reserved. The order on the face of it makes no finding as to the preliminary objections, and as the procedure is the informal procedure applicable to the District Court, it may be presumed that, but for the necessity for amending the application, no formal order would have been drawn up. It was only on the 15th February, the day after the date of the interlocutory order that

the Commissioner put on the file his grounds of judgment upon the preliminary objections, and from such judgment it may be inferred that the Commissioner rejected them. There is, however, no authority for the proposition that an appeal can be entered against inferences to be drawn from an interlocutory order. The only substantive order was that of the 14th June and in appealing against such order it was open to the appellants to raise all the objections raised at the preliminary hearing.

Mr. O'Connor also argued that it was not open to the appellants to raise the question of the authority of the Assistant Controller to originate the proceedings on the hearing of the substantive application, and still less to do so on the appeal. But it must always be open to a defendant to object at some stage to the authority of the solicitor or other agent of the plaintiff to bring the proceedings at all, and admittedly the proper way to raise such a question before the District Court is by preliminary objection. In the High Court there would be a summons to stay proceedings. The Commissioner, however, ruled that the point could only be raised at the hearing. In my opinion such ruling cannot be supported, but clearly that should not preclude the appellants, who had properly raised it by way of preliminary objection, from raising it again on the appeal.

Mr. O'Connor's third ground was that the appellants had waived any objection to the jurisdiction by denying liability on other grounds. The only authority for this proposition is *Barron v. Carmichael*,[1]. But in that case no objection to the jurisdiction was taken until the appeal when it was argued that there was no dispute within the meaning of the Acts, and Cozens Hardy M.R. held that it was too late to raise it then. Here, however, the appellants raised the issue of jurisdiction from the very commencement, and the case cited is no authority against them.

For these reasons I am of opinion that there is no substance in any of Mr. O'Connor's preliminary points.

On behalf of the appellants Mr. Walters relied most strongly on the question of jurisdiction. The jurisdiction of the Commissioner arises under the conditions mentioned in section 24 (1) of the Ordinance. The sub-section reads as follows:—

> "No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement."

The argument also raised the question as to whether the Assistant Controller was the applicant; and I will deal with this aspect of the question first. Under section 24 (3) an application for the settlement of any matter by the Commissioner under section 24 (1) may be made on behalf of the workman by the Controller. In the present case the workman being dead, a dependant is included in the definition of 'workman'. By section 26 (1) any appearance, application or act, etc. may be made or done on behalf of such person by an advocate and solicitor of the Supreme Court . . . . or when such person is a workman, by the Controller on his behalf.

There is no essential difference between the wording of sections 24 (3) and 26 (1), and section 24 (3) would appear to be redundant. There is, in my opinion, no doubt as to the meaning of these provisions. The Controller is enabled to represent a workman or a dependant in exactly the same way as a solicitor represents a client. Speaking loosely the Controller may be described as applicant in the same way as solicitors may be described as applicants in proceedings before the High Court. But, unless they are appearing in person, solicitors have no *locus standi* except in so far as they represent a client. In the same way the Controller has no *locus standi* unless he applies on behalf of someone. Obviously he has no right to go to the employer and claim compensation unless he is representing some actual person who is or may be entitled to such compensation. Even if for certain purposes the Controller may be described as the applicant, that does not make him a party.

The applications was filed on the 14th December, 1938, by the Assistant Controller of Labour on behalf of Woo Tang Nui, the respondents being Messrs. Alkaff & Company, the present appellants. It was an essential preliminary for the Assistant Controller to establish that some question had arisen between the parties (that is to say between Woo Tang Nui and Messrs. Alkaff & Co.) which they had been unable to settle by agreement. A perusal of the previous correspondence shows conclusively that no question had ever arisen between the parties, and that no attempt was ever made to settle it by agreement. The Assistant Controller in his letter of the 12th October, 1938, stated that he was merely trying to clear up the facts of the case in case any dependants turned up later. On the 17th October, 1938, Messrs. Allen & Gledhill, the respondents' solicitors, said that their clients were not prepared to fight out a case which had never been brought and which might never be brought. They concluded, "If and when a claim is duly made our

clients will deal with all aspects of the matter as occasion requires". This was the last correspondence on the subject before the application was filed, and from it emerge two facts, (1) that the Assistant Controller had at that time no principal whom he was representing and accordingly there were no parties between whom there could be a dispute, and (2) no attempt was made to settle by agreement.

In his evidence before the Commissioner the Assistant Controller said "I concluded (from the correspondence) that further negotiations would be useless and the only course was to file a claim". The Assistant Controller was no doubt acting with the best intentions, but he was not justified in assuming that Messrs. Alkaff & Company would not meet a claim which was properly presented. In any case good intentions will not relieve an administrative officer from complying with the express provisions of an Ordinance.

In these circumstances the jurisdiction of the Commissioner to settle the matter never arose, and in my opinion the objections to the jurisdiction were fundamental, (*Field v. Longden & Sons,*[2]). Generally speaking statutory jurisdiction cannot be enlarged even by consent, see *Simpson v. Crowle,*[4] per Lush, J. at pp. 255 and 256. The case of *Barron v. Carmichael,*[1] cited above, seems hardly consistent with a long line of authorities to the effect that want of jurisdiction is a fatal objection and may be taken at any time. On examining the report it is not clear that there was no question at issue, and it was conceded that the objection to the jurisdiction might have been raised at the hearing of the application. That was the course pursued in the present case. The case of *Barron v. Carmichael*[1] is accordingly distinguishable.

The next step was the filing of an application by the Assistant Controller of Labour in terms of section 24 of the Workmen's Compensation Ordinance, (Cap. 70). It is dated the 14th December 1938, and signed by the Assistant Controller of Labour, and endorsed by the Commissioner with a request for a written statement dealing with the claim to be filed by the Appellants within 17 days.

This was done on 5th January, 1939, and is a lengthy document which deals exhaustively with the whole matter. The first 7 paragraphs are preliminary objections and paragraphs 8—22 deal with substantive matters but repeat, by implication, the preliminary objections.

It is obvious that the original application filed was inadequate and incorrectly filled in and would require amendment.

Argument on the preliminary objections was heard on the 8th February, 1939, by the Commissioner and a preliminary judgment on these issues was subsequently delivered but at the conclusion of this argument the Commissioner attempted to frame what the issues were which Counsel for the Appellants did not admit were correctly framed or that they covered all the grounds.

Some of these preliminary objections were of a substantive nature and the remainder were of a technical nature criticising either the form of the application, or the procedure adopted.

It is not easy to separate these substantive objections and to state them briefly and concisely as they are rather interwoven but they appear to me to be divisible into two categories:

(a) That the Commissioner had no jurisdiction to entertain the application, and

(b) That the applicant, *i.e.* the Assistant Controller of Labour, had no *locus standi* in the matter.

I might here mention that the applicant as set out on the form of application was "The Assistant Controller of Labour, Chinese Protectorate, Singapore, on behalf of Woo Tang Nui (w)".

As regards (a), the first ground of objection was that no relevant question had arisen between the applicant and the Appellants. This refers to section 24 (1) of the Ordinance which reads as follows:—

> "(1) No application for the settlement of any matter by a Commissioner shall be made unless and until some question has arisen between the parties in connection therewith which they have been unable to settle by agreement."

Therefore, so it was argued, the Commissioner had no jurisdiction to entertain the application.

Other objections to the jurisdiction were that the application itself was defective in that there was no address given of the person Woo Tang Nui, nor was her interest in the application disclosed nor that she was a dependant. Further, that sub-section (2) of section 24 of the Ordinance had not been complied with.

As regards (b), it was argued that the Assistant Controller of Labour had no *locus standi* because he had no principal with a *prima facie* claim, was acting without any instructions from such principal and that there was no proof of the existence of any dependant or any dependency.

As I have said, there were other minor and technical objections, but the above set out, I think, correctly the main issues.

Having heard argument on these preliminary objections on the 8th February 1939, the Commissioner adjourned the matter to a specific date, *i.e.*, the 17th February, apparently having already then made up his mind that there was no substance in these preliminary objections. His written judgment is dated the 15th February, giving in detail his reasons for holding that the preliminary objections failed but it is curious that there is a formal order on the record, dated the 14th February 1939. This formal order refers to the hearing and arguments on the 8th February and then orders, firstly, various amendments to the form of application, secondly, it fixes the hearing for the 17th February and thirdly, reserves consideration of the costs of the preliminary objections.

Accordingly the hearing was resumed on the 17th February when there appears to have been further argument as to further amendments to the form of application, and evidence was taken. It appears from this evidence that subsequently to the last letter of the Assistant Controller of Labour to the Appellants (12th October 1938), the Assistant Controller of Labour had acquired further information as to the existence of the mother in China, both from purported letters from her and from statements made by her brother-in-law Lee Seng. These letters were not proved and the only evidence in regard to her was that of Lee Seng who gave evidence as to her existence, as to the deceased and as to the circumstances of her family generally.

In my opinion, therefore, the appeal should be allowed with costs here and below and the award of the Commissioner set aside. I understand from Mr. Walters that if the dependant came forward herself, and made a claim, such claim could probably be settled without a further hearing before the Commissioner. I make no finding on the question as to whether the evidence of dependancy was sufficient. If the application is reheard such question must be decided on its merits and on the evidence to be adduced.

There is only one other matter to which I need refer and that is the final paragraph of the Commissioner's judgment of the 14th June, 1939, which reads as follows:—

> "I think the inordinate heaviness of this litigation arose from nothing more serious than that the respondents' solicitors had previously advised that they need not insure—having assumed, or concluded on very hasty consideration that Ho Cham was an independent contractor and outside the scope of respondents' business; when they were challenged they contested a whole series of minor issues to mask the feebleness of their defence on the main points."

There is nothing whatever in the record to support these charges against the appellants' solicitors. They appear to me to be highly improper and unjudicial, and Mr. Walters was fully justified in taking the strongest exception to the aspersions recklessly made against his firm.

Poyser, C.J. (F.M.S.)—I have read the judgments of the other members of the Court, and agree with them that the appeal should be allowed, and there is very little I desire to add.

I was at first inclined to agree with Mr. O'Connor that as the appellants had not appealed from the order of the 14th February, it was not open to them to now argue grounds (i), (ii), (iii) & (v) of paragraph 3 of the petition of appeal. On further consideration, it appears to me that there was nothing in the order to appeal from as, on the face of it, it only dealt with non-controversial amendments to the form of application. The difficulty in this case arose from the Commissioner, unnecessarily, in my opinion, dealing with the various points that arose on the application at two separate and distinct hearings. It would have been far more convenient for all concerned if there had only been one hearing and one order.

I would only add that I entirely agree with the President of the Court that the charges against the appellant's solicitors are without any justification, and should not have been made.

Gordon-Smith, Ag. J.A.—This was an appeal from an award of $447.50 made by the Commissioner of Workmen's Compensation, in favour of Woo Tang Nui in respect of the death of her son Lee Wye Sin, who died on the 6th September, 1938, from injuries accidentally received while engaged on work for the Appellants.

As there were preliminary objections both at the hearing of the application before the Commissioner and at the hearing of the appeal before us and considerable argument thereon, it is necessary to set out the facts and sequences of events in some detail.

The details of the accident were not in dispute, namely that the deceased died as the result of a fall from the roof of a house while engaged in executing repairs. His immediate employer was Ho Chan, a masonry and carpentry contractor who, for the last 8 or 9 years had been exclusively employed by the Appellants for the purpose of doing repairs to the very large number of houses and buildings owned by the Appellants. There was no appeal against the findings

of the Commissioner in respect of the employment of the deceased or the amount of compensation and it was mainly on other grounds that liability was denied before the Commissioner.

In consequence of advice received from the Coroner, an uncle of the deceased, Lee Seng, communicated with the Assistant Controller of Labour, as a result of which the Assistant Controller of Labour wrote, on the 19th September, 1938, to the Appellants informing them that the deceased's mother was dependant on him and that it was likely that she would make a claim for compensation and the Assistant Controller of Labour asked for details of deceased's wages so that the amount claimable might be agreed upon. Having obtained further information, the Assistant Controller of Labour wrote again on the 23rd September, 1938, to the Appellants putting forward various proposition as to their presumed liability and stating that he had not then got in touch with any dependants but understood that the deceased had a mother alive in China.

To this letter the Appellants' Solicitors replied by letter of the 11th October and, *inter alia,* declined to admit the existence of any dependants. They asked by what authority the Assistant Controller of Labour purported to act for an unknown, unnamed and possibly non-existent person and it was submitted in this letter that until he had a definite principal he had no *locus standi* in the matter. The Assistant Controller of Labour by letter of the 12th October replied that he was "merely trying to clear up the facts of the case now in case any dependants turn up later". This was the last communication to the Appellants' solicitors by the Assistant Controller of Labour and to which the solicitors replied *inter alia* "Our clients are not prepared to fight out a case which has never been brought and which may never be brought . . . . If and when a claim is duly made, our clients will deal with all aspects of the matter as occasion requires".

I have set out relevant extracts from this correspondence in detail as it has an important bearing on the subsequent issues.

As, however, the last time he had visited China and seen Woo Tang Nui was 8 years previously, when her husband was still alive, his evidence in this respect was not of very great value. Lee Seng also gave evidence to the effect that the deceased supported his mother in China and had remitted money for that purpose. It was proved that in January 1938 the deceased had remitted $110.00 (Chinese currency) to China but this was not remitted direct to his mother but to his uncles with whom she lived. There was only evidence as to this one remittance although Lee Seng said that the deceased remitted money about every six months. Briefly, this was all the evidence there was as to the existence of the mother and her dependency on the deceased and on this the Commissioner awarded a total sum of $447.50 on the basis of the deceased's earnings being $18.00 p.m. and assessed the dependency at 7/8ths. The formal order is dated the 14th June 1939.

It was against this order that the Appellants appealed.

At the hearing before us, Mr. O'Connor took preliminary objections to the appeal, of which he had given previous notice to the Appellants' Solicitors, which were conveniently summarized under three heads as follows:—

(a) that grounds (i), (ii), (iii) and (v) of paragraph 3 of the Grounds of Appeal were against the findings of the Commissioner at the Preliminary hearing and were disposed of by the decision thereon, incorporated in the order of the 14th February 1939, and that there had been no appeal against this Order within the prescribed time.

(b) that the want of authority alleged in Grounds (i), (iii) and (v) could not now be raised but might have been raised at the Preliminary hearing or on an appeal therefrom.

(c) that Grounds (ii) and/or (v) raised a question of jurisdiction and objections thereto had been waived by the subsequent conduct of the Appellants in denying liability on other grounds.

As regards (a), it is clear by looking at the order of the 14th February itself, that there is no substance in this submission. This is a formal order (which, in my opinion, was quite unnecessary) and there is nothing in it providing grounds for any appeal which would raise the substantive matters in dispute. It is only from the fact that the Commissioner fixed the date of the further hearing that one can infer that he was against the submission made at the preliminary hearing as, if he had been of a different opinion, there would have been no need for any further hearing.

As regards (b), the want of authority was put in issue at the preliminary hearing and was raised in the formal grounds of appeal and persisted in before us and for the reasons given above, this point was an issue at large.

Similarly as regards (c), the question of jurisdiction was raised at the commencement and has been persisted in ever since. Nor can it be said that the Appellants have ever waived the point either by conduct or otherwise. It seems to me that *Barron v. Carmichael*[1], has no application to the circumstances of the present case.

The main submission for the Appellants was the question of jurisdiction of the Commissioner which arose by reason of section 24 (1) of the Ordinance. I have already set out this sub-section verbatim and it seems clear from the wording of the section itself and on the authority of *Simpson v. Crowle*[4], *Pringh v. Harris*[3] and *Field v. Longden*[2], that there is a statutory condition precedent before the Commissioner comes into the matter at all. No application to the Commissioner can be made until the statutory condition has been fulfilled. This condition is that some question has arisen between the parties which they have been unable to settle by agreement.

Assuming for the moment that the Assistant Controller of Labour, on behalf of the mother, was a party, can one possibly, in view of the last letter of the 12th October 1938 from the Assistant Controller of Labour to the Appellants and the reply thereto, say that the condition precedent had been fulfilled. The Assistant Controller of Labour says—"I am merely trying to clear up the facts of the case *now* in case any dependants turn up *later*" and the Solicitors' reply "If and when a claim is duly made, our clients will deal with all aspects of the matter as occasion requires".

These were the final communications between the parties before the formal application was filed. The Assistant Controller of Labour stated in his evidence that he concluded that further negotiations would be useless, but, with all due respect, he appears to have been wrong. Actually he obtained further and better information as to the existence of the mother although he was not then (and never has been) in a position to produce strict proof thereof, but he never communicated this further information, for what it was worth, to the Solicitors.

No wonder that they objected to admitting liability to pay compensation to a person until they were satisfied that that person existed and that they were under either a legal or moral obligation to pay such compensation. In my opinion and to express it colloquially, the Assistant Controller of Labour attempted "to put the cart before the horse" and it is clear that in all probability there would have been no necessity for any application under the Ordinance at all. In my opinion the submission in this respect is well founded and for this reason alone the appeal must be allowed.

As to the question of authority and the point that the Assistant Controller of Labour had no *locus standi* in the matter. It is clear from sub-section (3) of section 24 as read with the definition of workman (see last paragraph of sub-section (2) of section 2 of the Ordinance), and section 26 that the Assistant Controller of Labour is authorised to represent or to act for and on behalf of a dependant of a deceased workman.

Such being the case, it is immaterial how or in what actual terms he may describe himself in the form of application, so long as it is made clear that he is acting in such representative capacity and that the necessary particulars of the dependant are given. It may be that when representing a dependant either at the time of attempting to settle some question, or even when he files the application, he is not in possession of strict legal proof of the existence of such dependant or other necessary details of the circumstances of the dependant, but he must be prepared to produce such strict legal proof, if necessary, at the hearing. In the present case, he has never been in such a position and eventually such strict legal proof did become necessary, mainly because he precipitately filed his application and invoked the aid of the law, but without being in a position to comply with the law, but in my view the Assistant Controller of Labour had statutory authority and had a *locus standi* in the matter sufficient to enable him to enter into negotiations and, if necessary, to file a claim, on behalf of the mother.

It is unnecessary to decide the question as to whether on the evidence before him, the Commissioner was justified in coming to the conclusions he did as to the fact of and degree of dependency and I merely observe that the evidence thereon was rather nebulous.

In my opinion, therefore, the appeal must succeed, with costs both here and below and the award of the Commissioner must be set aside. This is, of course, without prejudice to a further claim being filed by or on behalf of the mother if and when a claim is made which it is impossible for the parties to settle by agreement and one was glad to note that in this respect the attitude thereon adopted by the Appellants appeared to foreshadow that in all probability any such claim would be settled by agreement and without further recourse to the Commissioner.